

## United States District Court, Northern District of Illinois

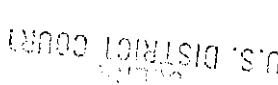
Name of Assigned Judge or Magistrate Judge	Matthew F. Kennelly	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	04 C 2935	DATE	8/24/2004
CASE TITLE	In Re: In Re: National Steel Corporation		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

## DOCKET ENTRY:

- (1)  Filed motion of [ use listing in "Motion" box above.]
  - (2)  Brief in support of motion due \_\_\_\_\_.
  - (3)  Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
  - (4)  Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
  - (5)  Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
  - (6)  Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
  - (7)  Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
  - (8)  [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
  - (9)  This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
 FRCP4(m)  Local Rule 41.1  FRCP41(a)(1)  FRCP41(a)(2).
  - (10)  [Other docket entry] For the reasons stated on the attached Memorandum Opinion and Order, the Bankruptcy Court's order denying NSC leave to file a late proof of claim is reversed, and the matter is remanded to the Bankruptcy Court for further proceedings consistent with this Memorandum Opinion.
- (11)  [For further detail see order attached to the original minute order.]

No notices required, advised in open court.	 2004 AUG 24 PM 5:15 <small>Date/time received in central Clerk's Office</small>	number of notices 8/25/04 <small>date docketed</small> Cys <small>docketing deputy initials</small> <small>date mailed notice</small> <small>mailing deputy initials</small>	Document Number
No notices required.			
Notices mailed by judge's staff.			
Notified counsel by telephone.			
Docketing to mail notices.			
Mail AO 450 form.			
Copy to judge/magistrate judge.			
OR			courtroom deputy's initials

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re	)	DOCKETED AUG 25 2004
NATIONAL STEEL CORPORATION, et al.	)	
Reorganized Debtors.	)	
	)	
	)	Case No. 04 C 2935
JFE STEEL CORPORATION,	)	
Appellant,	)	
	)	
v.	)	Case No. 04 C 2935
NATIONAL STEEL CORPORATION, et al.;	)	
THE NKK LITIGATION TRUST; THE AD	)	
HOC COMMITTEE OF BONDHOLDERS;	)	
MITSUBISHI CORPORATION; and	)	
MARUBENI CORPORATION,	)	
	)	Case No. 04 C 2935
Appellees.	)	
	)	

MEMORANDUM OPINION AND ORDER

MATTHEW F. KENNELL Y, District Judge:

JFE Steel Corporation has appealed from the Bankruptcy Court's order denying its motion for leave to file a late proof of claim against the debtors, National Steel Corporation (NSC) and other affiliated entities, in their Chapter 11 bankruptcy case. JFE contends that the Bankruptcy Court erred by failing to apply the standard set by the Supreme Court in *Pioneer v. Brunswick Associates*, 507 U.S. 380 (1993), for establishing whether excusable neglect permits the late filing of a claim. The Court agrees and therefore reverses and remands the matter to the Bankruptcy Court.

[O]

## Background

NSC filed its Chapter 11 petition on March 6, 2002. The Bankruptcy Court set August 15, 2002 as the bar date-the last day for filing claims against NSC and its affiliated debtors. On December 31, 2003, over sixteen months after the bar date, JFE filed a motion for leave to file a late claim. The claim sought contribution or indemnification from NSC for any claims under the Coal Industry Retiree Health Benefit Act, 26 U.S.C. § 9701 *et seq.* (the Coal Act), that any of NSC's creditors may assert against JFE as a related entity; JFE owns approximately 68 percent of NSC. JFE claims that the reason for its delay in filing this claim is directly attributable to actions by NSC that JFE characterizes as bad faith. Specifically, JFE claims that NSC amended its initial liquidation plan, just before it was confirmed by the Bankruptcy Court, to repudiate its Coal Act liabilities, despite having previously assured the Court and its creditors that it intended to honor these obligations. JFE contends that had NSC honored its Coal Act obligations as it originally indicated, JFE would have had no need to file a claim.

The Bankruptcy Court, in an oral ruling, denied JFE's request to file the late claim. The Court noted that JFE had been involved in the case from its very beginning and was well aware of the bar date and it noted the important function bar dates serve in Chapter 11 cases. The court also referenced the Seventh Circuit's decision in *In re Stavriotis*, 977 F.2d 1202 (7<sup>th</sup> Cir. 1992), in support of its conclusion that JFE should not be allowed to file its late claim, because it constituted an entirely different claim from any that JFE had previously asserted, and one that was undetermined and certain to be disputed. Finally, the court declared that any dispute between JFE and UMWA- one of NSC's creditors that indicated that it intended to try to hold JFE liable for NSC's Coal Act liabilities- would have to be addressed between those two parties

in another forum.

### **Analysis**

In *Pioneer*, the Supreme Court analyzed the circumstances under which missing a filing deadline counts as “excusable” neglect. In that case, creditors of a Chapter 11 debtor sought to extend the bar date for filing proofs of claim under Bankruptcy Rule 9006(b), which gives the court discretion to allow late filings where lateness was the result of excusable neglect. The Court took a broad view of excusable neglect, and instructed courts to take equitable circumstances into account in determining whether a party’s actions constitute excusable neglect. *Pioneer*, 507 U.S. at 395. Accordingly, a court can find excusable neglect not only in situations beyond the party’s control, but also in situations where the party’s action or failure to act was the result of carelessness or mistake. *Id.*; see also *In re Bulic*, 997 F.2d 299 (7th Cir. 1993). To evaluate what is “excusable,” the Supreme Court set forth four factors courts must consider: (1) the danger of prejudice to the debtor; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; (4) whether the movant acted in good faith. *Pioneer*, 507 U.S. at 395.

In this case, the Bankruptcy Court abused its discretion by failing to fully conduct the equitable analysis laid out in *Pioneer*. See *Stavriots*, 977 F.2d at 1204 (abuse of discretion will be found if the decision is based on an erroneous conclusion of law.) In its ruling denying relief, the Bankruptcy Court made reference to the “*Pioneer* excusable neglect standards,” but only to say that they had not been met. R. 12 at 18. The court did not identify the *Pioneer* factors and did not discuss them individually. Though this would not require reversal if the court had actually engaged in the equitable analysis that *Pioneer* mandates, see *Bateman v. U.S. Postal*

*Serv.*, 231 F.3d 1220, 1224 (9<sup>th</sup> Cir. 2000); *see also In re Bulic*, 997 F.2d at 302, the record does not reflect that the Bankruptcy Court did so in this case. The reasons the court gave for denying JFE relief- that JFE had been involved in the case from the beginning and was aware of the bar date- though certainly relevant to the determination of whether JFE's conduct was excusable, only touches upon one of the *Pioneer* factors, namely the reason for the delay. The court made no reference to whether JFE had acted in good faith, whether the debtor would be prejudiced by a late claim, and the potential impact of the delay, if any, on proceedings in the case. Though the court's reference to *Stavriotis* might be interpreted as dealing with the prejudice issue, the court did not address how granting JFE leave to file its claim would affect the claims resolution process, *see In re Plunkett*, 82 F.3d 738, 741 (7<sup>th</sup> Cir. 1996), or whether it would put NSC in a worse position than had JFE filed the claim before the bar date had expired, *see In re Kmart Corp.*, 03 C 7091, 2004 WL 756607, at \*2 (N.D. Ill. Feb. 27, 2004).

Nor did the court make any reference to JFE's argument that it had acted in good faith, namely that its late-expressed desire to make a claim was the product of NSC's changed position on its Coal Act liabilities. This was a significant omission, as this factor weighed in JFE's favor. Courts have held that where the conduct of both the debtor and creditor contribute to the late filing of a claim, the court should permit the claim to be filed. *See In re Dartmoor Homes, Inc.*, 175 B.R. 659, 668 (Bankr. N.D. Ill. 1994). JFE offered support for its contention that NSC had acted in bad faith by repudiating its Coal Act liabilities shortly after it amended its liquidation plan, and JFE filed its motion for leave to file a claim about a week after NSC's repudiation. These circumstances were not addressed by the Bankruptcy Court.

NSC asserts that JFE conceded that its prior counsel's lack of diligence was the reason

for its delay. NSC contends that JFE made no reference to NSC's alleged misrepresentations in its motion before the Bankruptcy Court, but only added these allegations once NSC objected to the motion. The fact remains, however, that JFE did argue NSC's alleged misleading in support of its request to file a claim. And in any event, lack of diligence on the part of JFE's prior counsel is not dispositive on the question of whether its delay was excusable, as a showing of fault on the part of the claimant does not defeat a finding of excusable neglect. *Pioneer*, 507 U.S. at 388. Rather, *Pioneer* makes clear that excusable neglect encompasses "situations in which the failure to comply with a filing deadline is attributable to negligence." *Id.* at 394. Though the delay in this case was lengthy, courts have made clear that there is no specific amount of time after which delay is inexcusable; rather, the length of the delay must be balanced with the other *Pioneer* factors, including prejudice. *In re Kmart*, 2004 WL 756607, at \*7.

### **Conclusion**

For the foregoing reasons, the Bankruptcy Court's order denying NSC leave to file a late proof of claim is reversed, and the matter is remanded to the Bankruptcy Court for further proceedings consistent with this Memorandum Opinion.



---

MATTHEW F. KENNELLY  
United States District Judge

Date: August 24, 2004